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TEKLA PAPP

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The author's intention is to initiate the reader into the grounds and principles of Japanese Company Law, so the essay consists of the following parts:

- I. a) the legal background of Japanese Company Law;
b) the general definitions of Japanese Company Law;
- II. a) the types of business organisations;
b) the general characteristics of the four commercial companies;
- III. the registration of companies;
- IV. appendixes:
 - A. the main differences between the stock company and the limited liability company;
 - B. the sample of articles of incorporation;
 - C. the management chart of a Japanese company;
 - D. the standard ranks of Japanese management.

*

I/a) The legal background of Japanese Company Law¹

The Japanese Company Law is an interesting mixture of the German (a bit the French) civil and commercial law, and the US corporate law, influenced by Japanese societal and cultural traditions.

The sources of Japanese Commercial Law are:

- Commercial Code (this is the primary source);
- special laws and regulations (for example: the Commercial Registration Law, the Bills of Exchange Law, the Law relating Limited Liability Company, the Act concerning Prohibition of Private Monopoly and Maintenance of Fair Trade, etc.);
- treaties on commercial affairs and relations (agreements among nations, which is applied for subjects of undersigned nations through ratification and promulgation);
- customary laws on commercial affairs;
- self-governing laws on commercial affairs (for example: the articles of incorporation).

The order of applying sources is the following:

- a) commercial self-governing law;
- b) special laws, regulations or treaties;

¹ „Introduction to Commercial Code in Japan" (Research and Training Institute, Ministry of Justice; Tokyo; Japan; Study Course in Legal and Judicial Cooperation; Japan International Cooperation Agency; pp. 1-5); „Company Law in East Asia" (edited by R. Tomasic; Ashgate, Dartmouth; 1999; pp. 40-42); „Doing Business in Asia" (L. R. Nottage; CCH Asia Ltd.; Volume 1; 1991; JPN 30-001-30-003); „Japan Business Law Guide" (CCH Asia Pacific; Sidney; 1 volume; 1998; 10-530 - 10-650)

- c) Commercial Code;
- d) commercial customary law;
- e) special laws or treaties on civil affairs and relations;
- f) Civil Code;
- g) customary laws on civil affairs.

This order basis on the provision of the Commercial Code:² „As to a commercial matter, the commercial customary law shall apply if there are no provisions in this Code; and the Civil Code shall apply if there is no such law.”

The Commercial Code includes four books.

In Book I. the General Provisions (as traders, commercial registration, trade names, etc.) can be found;

Book II. regulates the law relating to companies (*gomei-kaisha*, *goshi-kaisha*, *kabushiki-kaisha*);

Book III. concerns the Commercial Transactions;

Book IV. covers the maritime commerce. So we can state that the Japanese Company Law is regulated -first of all- in the Book II. of Commercial Code, in the Private Company Law (law related to *yugen-kaisha*) and Law for Special Exceptions to the Commercial Code referring to audit etc. of the of *kabushiki-kaisha* (the Japanese Stock Company). But the Commercial Code links with the Civil Code and commercial custom, the Article 1 of the Commercial Code ascertains it. It must be emphasised that the commercial transactions, which can be carried out by commercial entities, can be found in the Civil Code (for example: the basic law on commercial contracts and securities). It is worth mentioning that the Japanese courts are developing principles through the case law which don't have grounds in the Codes or legislation; sometimes these principles get into the Codes (for example: the doctrines of good faith and trust; or the principle of abuse of rights).

1/b) The general definitions of Japanese Company Law³

1. The term of „trader”

The trader is „a person who engages in commercial transactions as a business on his own behalf”.⁴ In accordance with the Commercial Code⁵ and Private Company Law⁶ the companies belong to the phrase of trader.

The interpretation of the term:

- „commercial transactions” means the absolute and business commercial transactions;⁷

² The Commercial Code (Law No. 48, March 9, 1899) Book I., Chapter I., Article 1

³ „Introduction to Commercial Code in Japan” (pp. 8–31; 34–36) „Recent developments in Japanese corporation law” (M. Tatsuta; Staat und Unternehmen aus der Sicht des Rechts” (Deutsch – japanisches Symposium in Kyoto vom 1. bis 3. Oktober 1992, J. C. B. Mohr, Tübingen; 1994; pp. 184–187) H. ODA: „*Japanese Law*” (Butterworths; London, Dublin, Edinburgh; 1992; p. 266).

⁴ CC, Book I., Chapter II., Art. 4 (1).

⁵ CC, Book I., Chapter II., Art. 4 (2) and Book II., Chapter I., Art. 52 (2).

⁶ Private Company Law (Law Relating to *yugen-kaisha*) (Law No. 74, April 5, 1938) Chapter I., Art. 2.

⁷ See CC, Book III., Chapter I., Arts. 501, 502.

- under the word “business” the carrying out the same arts of transactions regularly and repeating for the purpose of making profit can be understood;
- „on his own behalf” covers that the trader himself is the object of rights and obligations of commercial transactions.

The trader is a legal entity and has business capacity (the ability to carry on business activities on his own initiative).

2. The definition of business office

The trader’s place of business is the business office.

The trader may pursue his one or more business in two or more business offices. In this case the office, which directs and controls the other ones, is called head office and the rest of them can be considered branch offices.

The business office is the place of fulfilling duties which arise from commercial transactions.⁸ The business office determines the place of registration:⁹ „Matters required to be registered under this Code shall, on the application of the party concerned, be entered in the Commercial Register kept by the Registry having jurisdiction over the seat of his place of business”; and „Matters required to be registered at the seat of the principal office shall, except as otherwise provided for in this Code, be registered also at the seat of each branch office”.¹⁰ The Code of Civil Procedure (Art. 103) provides that the business office is the place of delivering documents for civil action.

3. The trade name

This is the trader’s business name.

The trade name should be indicated with letters (as the person’s name) and pronounceable. The charts, patterns or symbols are not acceptable in the trade name. The Commercial Code provides¹¹ that „a trader may use his surname, his full name, or any other denomination as his trade name”. The trade name of a company has to comprise the word „*gomei-kaisha*”, „*goshi-kaisha*”, „*kabushiki-kaisha*”, or „*yugen-kaisha*”¹² according to its nature.

This name is used to represent the trader himself in business transactions. It is permitted for the trader to use only one trade name per one business; this is the principle of the single trade name. More trade names must not be used for one business. The same shall apply for companies: one legal entity should have one trade name, for the purpose of identifying and distinguishing from the other companies.

A person other than a company is prohibited to use in the trade name any phrase, word which is suggestion of a company; the same is effective for transfer of the trade name.¹³

⁸ See CC, Book III., Chapter II., Art. 516.

⁹ See CC, Book I., Chapter III., Art. 9.

¹⁰ See CC, Book I., Chapter III., Art. 10.

¹¹ See CC, Book I., Chapter IV., Art. 16.

¹² See CC, Book I., Chapter IV., Art. 17; and Private Company Law, Chapter I., Art. 3.(1).

¹³ See CC, Book I., Chapter IV., Art. 18; and Private Company Law, Chapter I., Art. 3.(2).

The trade name of a company has to be registered by law,¹⁴ but the registration of individual trader's business name depends on the intention of the trader: the Commercial Code does not prescribe it obligatory. The effects of registration of the trade name:

– on one hand: „No trade name which has been registered by another person shall be registered in the same city, town or village in respect of the same kind of business”,¹⁵

– on the other hand: “A person, who has registered a trade name may demand, as against any person using the same or a similar trade name for purposes of unfair competition, the discontinuance of its use; this shall not, however, preclude any claim for damages. Any person who uses the registered trade name of another in the same city, town or village in respect of the same class of business shall be presumed to do so for purposes of unfair competition”.¹⁶ In addition to this remedy, any person who uses the trade name which is widely recognised among traders or consumers, whether it is registered or not, may demand the discontinuance of its use and/or damages (Unfair Competition Prevention Law Art.2 para.1 subpara.1, Art 3, Art.4).

The rights of the trade name: the trader has the right to use the trade name undisturbed by another party (this is the right to utilise the trade name) and to reject the unlawful utilisation of the same or similar trade name used by another person (this is the exclusive rights to utilise the trade name). The trade name may be subject of transfer and inheritance, because it includes a property-type value.

4. The company

The company is „an association incorporated for the purpose of engaging in commercial transactions as a business”.¹⁷ So the company is a corporation formed for the purpose of making profit. The company is a legal entity, and has the same capacity of rights as a natural person, but with restriction (Civil Code, Art. 43).¹⁸ Besides, the Commercial Code¹⁹ and the Private Company Law²⁰ prohibit a company from becoming „a member with unlimited liability of another company”. All the Japanese business corporations -including the companies- have a separate corporate entity.²¹

II.

II/a) The types of business organisations

In Japan business can be carried out in one of these six legal forms:

- a) „*kumiai*” (partnership);²²
- b) „*tokumeikumiai*” (limited, or anonymous partnership);²³

¹⁴ See CC, Book II., Chapter II., Articles 63,64; Chapter III., Art. 149; Chapter IV., Art.166; and Private Company Law, Chapter II., Art. 6.

¹⁵ See CC, Book I., Chapter IV., Art. 19.

¹⁶ See CC, Book I., Chapter IV., Art. 20.

¹⁷ See CC, Book II., Chapter I., Art. 52.

¹⁸ „A juristic person has rights and duties, subject to the provisions of laws and ordinances and within the scope of its objects as determined by the articles of incorporation or by the act of endowment.”

¹⁹ See CC, Book II., Chapter I., Art. 55.

²⁰ See Private Company Law, Chapter I., Art. 4.

²¹ See CC, Book II., Chapter I., Art. 54., Private Company Law, Chapter I., Art. 1 para. 2.

²² See Civil Code, Art. 667 para. 1.

- c) „*gomeigaisha*” (incorporated partnership);²⁴
- d) „*goshigaisha*” (incorporated limited partnership);²⁵
- e) „*yugengaisha*” (limited liability company);²⁶
- f) „*kabushikigaisha*” (stock company).²⁷

There used to be an other type of business association: KgaA,²⁸ it was abolished in 1950 by the reason of its structural complexity. Besides, GmbH & Co. KG is not allowed to form in Japan, because it is forbidden to be a member with unlimited liability in the limited liability company.²⁹

The simple partnerships [see a) and b)] are pre-incorporation relationships between promoters. These forms don't provide limited liability for their investors, and so are not popular for large business in Japan.³⁰

The standard partnership (*kumiai*) can be founded by simple contract: „A contract to form a partnership becomes effective when each of the parties agrees to carry on a joint undertaking by making a contribution thereto.”³¹

The variation of the „*kumiai*” is the „*tokumeikumiai*” or undisclosed association:³² „A contract of undisclosed association is formed when the parties agree that one of them shall make a contribution toward the business of the other, and that they shall divide any profits arising from such business.” The anonymous party invests in the other party's business, which is operated not jointly, only by party had business; so „*tokumeikumiai*” is formed by a contract between the undisclosed partner and the business operating partner. It has not any separate legal personality, but it offers for the undisclosed party the advantages of anonymity and limited liability.

[The other four types of organisational forms are discussed in II/b)]

II/b) The general characteristics of the four commercial companies

A. The incorporated or general partnership

The „*gomeigaisha*” is a partnership with two or more members having unlimited liability; so these members jointly and directly liable for liabilities, if the assets of the

²³ See CC, Book III., Chapter IV., Art. 535

²⁴ See CC, Book II., Chapter II.

²⁵ See CC, Book II., Chapter III.

²⁶ See Private Company Law

²⁷ See CC, Book II., Chapter IV-VII.

²⁸ See M. TATSUTA: *Recent developments in Japanese corporation law* (Staat und Unternehmen aus der Sicht des Rechts; Deutsch-japanisches Symposium in Kyoto vom 1. bis 3. Oktober 1992; J. C. B. Mohr (Paul Siebeck) Tübingen 1994; p. 182)

²⁹ See M. TATSUTA: *Recent developments in Japanese corporation law* (Staat und Unternehmen aus der Sicht des Rechts; Deutsch-japanisches Symposium in Kyoto vom 1. bis 3. Oktober 1992; J. C. B. Mohr (Paul Siebeck) Tübingen 1994; p. 182) and CC, Book II., Chapter I., Art. 55; Private Company Law, Chapter I., Art. 4

³⁰ See H. KANDA: *Regulation of Japanese Capital Markets* (Staat und Unternehmen aus der Sicht des Rechts; Deutsch-japanisches Symposium in Kyoto vom 1. bis 3. Oktober 1992; J. C. B. Mohr (Paul Siebeck) Tübingen 1994; p. 211)

³¹ See Civil Code, Art. 667 para 1

³² See CC, Book III., Chapter IV., Art. 535

company are not enough to satisfy its obligation.³³ Each partner has the right to administer the affairs of the company and to represent the company.³⁴

The articles of incorporation of a partnership shall comprise:

- the trade name;
- the seat of the principal office;
- the object;
- the name and permanent residence of each partner;
- the subject-matter and the value of the contribution to be made by each partner; and shall be signed by each member³⁵, but it is not necessary for a notary public to attest to the articles of incorporation.

The registration of incorporation of this company shall contain the following particulars beside the above-mentioned:³⁶

- if the partners had liked to determine the period of duration and the cases for dissolution;
- if all members are not entitled to act for the partnership, the names of the members representing the company and their authority. The „*gomeigaisha*” comes into existence when the registration of incorporation has been effected by a representative of the head office with respect to the above mentioned items.

The internal relations of the „*gomeigaisha*”:

- the distribution of loss and gain is conducted according to the amount of each member's contribution during the term of business;
- all members have the right to control business and to bear duties;
- it is not always needed to hold a meeting for decision making;
- the manager's appointment and dismissal shall be decided by the majority of all members' votes;³⁷
- all partners' approval is necessary to change the articles of incorporation or to do any act outside the company's object;³⁸
- all the other members' consent is needed, if a partner had liked to transfer his share.³⁹ In this part of Commercial Code we can find the prohibition of competition and intervention by the company,⁴⁰ or the provision of the member's transaction on his own behalf.⁴¹

The external relations of the partnership:

- the member who runs the business has the power to represent the company;
- by the articles 76, 77 of Commercial Code the representation of „*gomeigaisha*” may be independent or joint;

³³ See CC, Book II., Chapter II., Art. 80.

³⁴ See CC, Book II., Chapter II., Articles 70, 76.

³⁵ See CC, Book II., Chapter II., Art. 63.

³⁶ See CC, Book II., Chapter II., Art. 64.

³⁷ See CC, Book II., Chapter II., Art. 71.

³⁸ See CC, Book II., Chapter II., Art. 72.

³⁹ See CC, Book II., Chapter II., Art. 73.

⁴⁰ See CC, Book II., Chapter II., Art. 74.

⁴¹ See CC, Book II., Chapter II., Art. 75.

- the partner representing the company has right to do all judicial and extra-judicial acts with regard to company's business;⁴²
- the members may set up against a company's creditor any defence, which can be set up by the partnership (defence by partner);⁴³
- a partner joined in the existing partnership shall be liable for all its obligations.⁴⁴

The partnership shall terminate – beyond the article 91 para. 1 – for any of the following reasons:⁴⁵

- a) the happening of any event specified in the articles of incorporation;
- b) all members' consent;
- c) death;
- d) bankruptcy;
- e) receiving a decision of the commencement of guardianship;
- f) expulsion.

A partnership shall be dissolved in the following cases:⁴⁶

- a) expiration of the company's duration or any other reason settled in the articles of incorporation;
- b) all partners' agreement;
- c) amalgamation;
- d) if there's only one member left;
- e) the company's bankruptcy;
- f) decision of the Court.

For purposes of liquidation the partnership shall be deemed to continue its exist even after its dissolution,⁴⁷ this liquidation may be voluntary or statutory.⁴⁸

B. The limited partnership

This type of company is generally governed by the same provisions as for the general partnership.⁴⁹

The „*goshigaisha*” has member with limited (the Article 157 of Commercial Code provides that the member with limited liability shall be liable for the obligations of the company to the extent of the amount of his contribution, but only according to the amount of the contribution which he didn't make the partnership) and unlimited liability. The differences between the two partnerships come from the unlike liabilities of the members; see these more important cases below:

- a) in the articles of incorporation of the limited partnership shall state each member's liability;⁵⁰

⁴² See CC, Book II., Chapter II., Art. 78.

⁴³ See CC, Book II., Chapter II., Art. 81.

⁴⁴ See CC, Book II., Chapter II., Art. 82.

⁴⁵ See CC, Book II., Chapter II., Art. 85.

⁴⁶ See CC, Book II., Chapter II., Art. 94.

⁴⁷ See CC, Book II., Chapter II., Art. 116.

⁴⁸ See CC, Book II., Chapter II., Articles 117, 120.

⁴⁹ See CC, Book II., Chapter III., Art. 147.

⁵⁰ See CC, Book II., Chapter III., Art. 148.

- b) the registration of the incorporation shall include each partner's liability, and the number and the total amount of the contributions of the members with limited liability;⁵¹
- c) the members with limited liability may make their contributions only in money or other property;⁵²
- d) only the partners with unlimited liability are entitled to administer the company's affairs,⁵³ to represent the company,⁵⁴ and to appoint and dismiss the limited partnership's manager;⁵⁵
- e) if the member with limited liability wants to transfer his share, the consent of all partners with unlimited liability is necessary;⁵⁶
- f) the freedom of competition for a partner with limited liability;⁵⁷
- g) if the partner with limited liability dies, his successor becomes a member in his place;⁵⁸
- h) if the partnership of all partners with unlimited liability has terminated, the „*goshigaisha*” shall be dissolved; but the exist of the partnership may be continued with the consent of all remaining members by admitting a partner with limited liability or a partner with unlimited liability;⁵⁹
- i) if the company of all members has terminated, the partnership may be continued as a „*gomeigaisha*” by the consent of all partners with unlimited liability;⁶⁰
- j) the limited partnership may change its organisation and become a general partnership by the agreement of all members.⁶¹

C. The limited liability company or company with limited responsibility or private company

A „*yugengaisha*” is an association incorporated for the purpose of engaging a commercial business or any other business transactions with a view to acquisition of gain.⁶² This company is a juristic person.⁶³ This company is prohibited from publicly inviting subscriptions for shares.

All persons who want to be a member shall prepare and affix the name and seal the articles of incorporation, and shall obtain its authentication by a notary public.⁶⁴ The articles of incorporation shall contain the following items:⁶⁵

- a) the trade name; it has to include the phrase „*yugengaisha*”;⁶⁶

⁵¹ See CC, Book II., Chapter III., Art. 149.

⁵² See CC, Book II., Chapter III., Art. 150.

⁵³ See CC, Book II., Chapter III., Art. 151.

⁵⁴ See CC, Book II., Chapter III., Art. 154.

⁵⁵ See CC, Book II., Chapter III., Art. 152.

⁵⁶ See CC, Book II., Chapter III., Art. 154.

⁵⁷ See CC, Book II., Chapter III., Art. 155.

⁵⁸ See CC, Book II., Chapter III., Art. 161.

⁵⁹ See CC, Book II., Chapter III., Art. 162 para 1.

⁶⁰ See CC, Book II., Chapter III., Art. 162 para 2.

⁶¹ See CC, Book II., Chapter III., Art. 163.

⁶² See Private Company Law, Chapter I., Art.1 para 1.

⁶³ See Private Company Law, Chapter I., Art.1 para 2.

⁶⁴ See Private Company Law, Chapter II., Art.5.

⁶⁵ See Private Company Law, Chapter II., Art.6.

⁶⁶ See Private Company Law, Chapter II., Art.3.

- b) the object;
- c) the seat of the principal office;
- d) the members' name and permanent residence; the total number of the members shall not be more than fifty,⁶⁷ at least one promoter is required;
- e) the total amount of the capital; it shall not be less than three million yen;⁶⁸
- f) the number of units of contribution to be made by each member; in the case of the contribution in kind it is necessary to point out more particulars⁶⁹ (the subject-matter, the value, the number of units of contribution to be given for it);
- g) the amount of one unit of contribution; the amount of each unit of contribution shall be equal.⁷⁰ The company's directors may be designated by the articles of incorporation; if it doesn't happen they shall be appointed at a general meeting of promoters.⁷¹ The auditor is not a necessary organ,⁷² but when the promoters intend to appoint him, its procedure is the same as at the directors' appointment.

The directors shall cause the members to pay the whole contribution – the payment shall be undertaken by a bank or a trust company, which the directors designate –, or to make the whole contribution in kind.⁷³

In accordance with Article 13 of Private Company Law the registration of incorporation shall be effected within two weeks from the day on which the payment or delivery has been made.⁷⁴ Beyond the content of the articles of incorporation the following matters shall be registered:⁷⁵

- the branch office;
- if the term of existence and the reason for dissolution have been specified;
- each director's name and permanent residence, their representative authority, and the art of representation (individual or joint);
- each auditor's name and permanent residence.

The positions of partners, their rights and duties:

- the members' liability shall be limited to extent of the amount of his contribution,⁷⁶
- each member has shares in compliance with the number of units of his contribution⁷⁷
- the transfer of shares among members is allowed;⁷⁸
- the transfer of shares for a not member is bound to approval of the general meeting;⁷⁹
- it's possible a share in co-ownership;⁸⁰

⁶⁷ See Private Company Law, Chapter II., Art. 8.

⁶⁸ See Private Company Law, Chapter II., Art. 9.

⁶⁹ See Private Company Law, Chapter II., Art. 7.

⁷⁰ See Private Company Law, Chapter II., Art. 10.

⁷¹ See Private Company Law, Chapter II., Art. 11.

⁷² See Private Company Law, Chapter IV., Art. 33.

⁷³ See Private Company Law, Chapter II., Art. 12.

⁷⁴ See Private Company Law, Chapter II., Art. 13 para 1.

⁷⁵ See Private Company Law, Chapter II., Art. 13 para 2.

⁷⁶ See Private Company Law, Chapter III., Art. 17.

⁷⁷ See Private Company Law, Chapter III., Art. 18.

⁷⁸ See Private Company Law, Chapter III., Art. 19 para 1.

⁷⁹ See Private Company Law, Chapter III., Art. 19 para 2.

⁸⁰ See Private Company Law, Chapter III., Art. 22.

– by the Article 44 of Private Company Law the distribution of profits shall be made in proportion to the number of units of contribution.

The limited liability company's necessary and permanent organs are *a)* the general meeting, *b)* the director, and *c)* an auditor is a voluntary organ.

ad a) The general meeting is the highest decision-making organ. The general meeting shall be convened by the directors.⁸¹ To the determination of convocation is needed the resolution by the majority of directors.⁸² There is a way of convocation by minority members.⁸³ The convocation notice shall be sent to each member, one week before the date of the general meeting; the articles of incorporation may shorten this period.⁸⁴ There is possibility for the omission of this procedure.⁸⁵ By the general rule the resolutions shall pass by the majority of votes of the members present having majority votes of all members.⁸⁶ One vote is due to each member for each unit of contribution.⁸⁷ The passing of a resolution in writing is permitted.⁸⁸ The alteration of the articles of incorporation may be happened by a resolution of the general meeting. The increase and the reduction of the company's capital are qualified as alteration. There are three ways to increase capital: to enhance the amount of the unit of contribution or the number of units of contributions or both.

ad b) The „*yugengai*sha” shall have one or more directors.⁸⁹ The directors conduct the company's business (unless otherwise provided in the articles of incorporation; in the event of two or more directors the decision shall be made by the majority of the votes of the directors), and represent (individual or joint) the private company.⁹⁰ The directors' duties are to keep the articles of incorporation and the register of members at the head office.⁹¹ The term of a director's office isn't prescribed in the Private Company Law.

ad c) The company with limited responsibility may have – if the articles of incorporation order – one or more auditors.⁹² The power of the auditor:⁹³

- he must investigate the document relating to account;
- he may investigate the business and the property of the company;
- he may inspect or copy the account books and documents;
- he may ask the director for report about the account.

⁸¹ See Private Company Law, Chapter IV., Art. 35.

⁸² See Private Company Law, Chapter IV., Art. 36-2.

⁸³ See Private Company Law, Chapter IV., Art. 37.

⁸⁴ See Private Company Law, Chapter IV., Art. 36.

⁸⁵ See Private Company Law, Chapter IV., Art. 38.

⁸⁶ See Private Company Law, Chapter IV., Art. 38-2.

⁸⁷ See Private Company Law, Chapter IV., Art. 39.

⁸⁸ See Private Company Law, Chapter IV., Art. 42.

⁸⁹ See Private Company Law, Chapter IV., Art. 25.

⁹⁰ See Private Company Law, Chapter IV., Articles 26, 27.

⁹¹ See Private Company Law, Chapter IV., Art. 28.

⁹² See Private Company Law, Chapter IV., Art. 33.

⁹³ See Private Company Law, Chapter IV., Art. 33-2.

The causes for dissolution:⁹⁴

- expiration in the articles of incorporation fixed duration or other, in the articles of incorporation prescribed cause;
- resolution of the general meeting;
- amalgamation of the company;
- bankruptcy of the company;
- decision of the Court.

There is not any special rule for liquidation of the private company.

D. The joint stock company or limited company or company limited by shares⁹⁵

The "*kabushikigaisha*" is a juridical person,⁹⁶ and has those rights and liabilities which fall within the scope of those objects (the doctrine of *ultra vires*).⁹⁷ This form of company is a capital corporate based on the contributions of many people with common objectives.

Formation

The company may be formed by one or more natural or legal persons who must prepare, sign, seal and register the articles of incorporation in the prescribed form (shall be attested by a notary public).⁹⁸ The content of the articles of incorporation is the following.⁹⁹

a) absolute mentioned items (compulsory)

- the trade name; it must include the phrase „*kabushikigaisha*“;
- the object; the range of undertakings which the company intends to carry on;
- the seat of the principal office;
- each promoter's name and permanent residence;
- the total number of shares authorised to be issued by the company; at the time of incorporation at least one-quarter of these shares shall be issued;¹⁰⁰ by the article 168-4 of Commercial Code the amount of share capital shall be minimum ten million yen;
- the total number of shares issued at the time of incorporation; in this case – as in the Article 168-2 – must be determined with the consent of all the promoters the class, the number and the issue-price of the shares;
- the manner in which the company is to give its public notices (in Official Gazettes or in a daily newspaper).¹⁰¹

⁹⁴ See Private Company Law, Chapter VII., Art. 69.

⁹⁵ About the main differences between „*yugengaisha*“ and „*kabushikigaisha*“ see the appendix A.

⁹⁶ See CC, Book II., Chapter I., Art. 54.

⁹⁷ See Civil Code, Art. 43.

⁹⁸ See CC, Book II., Chapter IV., Articles 165, 167.

⁹⁹ See CC, Book II., Chapter IV., Art., 166.

¹⁰⁰ See CC, Book II., Chapter IV., Art., 166 para 3.

¹⁰¹ See CC, Book II., Chapter IV., Art., 166 para 4.

b) The relative mentioned items (voluntary) of articles of incorporation can be found in the Commercial Code; illustrate with examples:¹⁰²

- any special benefits which the promoters receive;
- or the provisions about the contribution in kind;
- or the amount of remuneration to be received by the promoters etc.

There are two procedures of incorporation:

- incorporation without offering (or private incorporation) [see (a)]
- and incorporation with offering (or incorporation by subscription) [see (b)]. The preparation and determination of content of the articles of incorporation, the subscribing of shares by promoters are common to these two forms.

(a) In this case the promoters take all of the shares which are to be issued at the time of incorporation. At this time the promoters shall make the payment of the issue price in full and without delay; as well as they must select the directors and the auditors.¹⁰³ The director is required to ask the court to appoint the controller, who checks the procedure of incorporation and this inspector reports the investigation to the court.¹⁰⁴

(b) If the promoters do not take all the shares to be issued at the time of incorporation, they shall invite subscriptions therefore.¹⁰⁵ A person who intends to subscribe for shares shall complete an application form (the number of shares subscribed by him, his permanent residence, and his sign).¹⁰⁶ When all the shares have been subscribed for and the payment of the issue price has been made in full, then the promoters shall convene the general meeting without delay.¹⁰⁷ In the general meeting the directors and auditors shall be appointed and the report about the process of incorporation must be verified.¹⁰⁸

The registration of incorporation shall be effected within two weeks from the day on which the investigation procedure is completed.¹⁰⁹

Capital, shares, shareholders

The company's assets are used as the security by creditors of the company and a shareholder does not bear any liability toward the company's creditors.¹¹⁰

Nowadays any enterprise of any size may form a „*kabushikigaisha*” – the minimum capital requirement of 10 million yen must be satisfied –, but there is a distinction for auditing purposes based on the size of the company's share capital and on the ground of the loan capital.¹¹¹ The large companies are defined as those with an authorised capital in

¹⁰² See CC, Book II., Chapter IV., Art., 168.

¹⁰³ See CC, Book II., Chapter IV., Art. 170.

¹⁰⁴ See CC, Book II., Chapter IV., Art. 173.

¹⁰⁵ See CC, Book II., Chapter IV., Art. 174.

¹⁰⁶ See CC, Book II., Chapter IV., Art. 175.

¹⁰⁷ See CC, Book II., Chapter IV., Articles 177, 180.

¹⁰⁸ See CC, Book II., Chapter IV., Articles 182, 183.

¹⁰⁹ See CC, Book II., Chapter IV., Art. 188, and in the appendix B: the sample of the articles of incorporation.

¹¹⁰ See CC, Book II., Chapter IV., Art. 200.

¹¹¹ See Law for Special Exceptions to the Commercial Code concerning Audit, etc. of *kabushiki-gaisha* (Law No. 22, Apr. 2, 1974).

excess of 500 million or the outstanding loan capital in excess of 20 billion yen.¹¹² At this type of the stock companies an independent auditor (he shall be either a certified public accountant or an incorporated accounting firm) shall be appointed at a general meeting of shareholders.¹¹³ The medium companies are determined as those with an authorised capital between 500-100 million yen and the loan capital less than 20 billion yen. The small companies are specified as those with an authorised capital of less than 100 million yen.

The amount of capital is the total of the issuing price of the issued shares. We can define the shares as a unit of contribution and as equal-allotment-type units in the stock company. The content of each share should be the same, but the company may issue several classes of shares which differ in their contents as to the distribution of profit, interest or surplus assets, or the retirement of shares by profits, as it is stipulated by the articles of incorporation¹¹⁴ (for example: preferred, deferred, mixed, redeemable, convertible shares or without voting rights).

The company limited by shares is required to maintain the shareholders' register.¹¹⁵ The company's directors keep this register at the head office, and in it must be stated:

- each shareholder's name and permanent residence;
- the class and the number of shares held by each shareholder;
- the date of acquisition of each share. The transfer of shares is not effective against the company until the matter has been entered in the shareholders' register.¹¹⁶

The shareholder is the constituent member of the stock company and of the general meeting, and the owner of the enterprise in the substantial sense. The shareholder's duty is to contribute to the extent of the amount of his subscription.¹¹⁷ We can classify the shareholder's rights as investment rights (a), and as management rights (b):

(a) The most important investment rights are the following:

- right to receive a share certificate;¹¹⁸
- right to have shares registered (see above);
- right to transfer the share;¹¹⁹
- right to receive a dividend;¹²⁰

(b) The most important management rights cover:

- right to appoint and to dismiss directors at general meeting;¹²¹
- right to vote at the general meeting, on the basis of one vote per one share;¹²²
- right to inquire about the company's business¹²³ at the general meeting;

¹¹² See the Stock Companies Special Audit Act, Art. 2.

¹¹³ See the Stock Companies Special Audit Act, Articles 3, 4 and 16.

¹¹⁴ See CC, Book II., Chapter IV., Art. 222.

¹¹⁵ See CC, Book II., Chapter IV., Art. 223.

¹¹⁶ See CC, Book II., Chapter IV., Articles 206, 224.

¹¹⁷ See CC, Book II., Chapter IV., Art. 200.

¹¹⁸ See CC, Book II., Chapter IV., Articles 205, 226, 226-2.

¹¹⁹ See CC, Book II., Chapter IV., Art. 204.

¹²⁰ See CC, Book II., Chapter IV., Art. 290.

¹²¹ See CC, Book II., Chapter IV., Articles 254, 257.

¹²² See CC, Book II., Chapter IV., Art. 241.

¹²³ See CC, Book II., Chapter IV., Articles 237-3, 282, 283, 293-6.

- right to receive the auditor's report;¹²⁴
- right to convene an extraordinary general meeting;¹²⁵
- right to decide about the dissolution, amalgamation and liquidation of the company at the general meeting;¹²⁶
- right to vote on any amendment to the articles of incorporation.¹²⁷
- right to sue the directors and the auditors.¹²⁸

The organs of the company

The organs of the „*kabushikigaisha*“ are the general meeting (a), the board of directors (b) and the auditors (c).

(a) The general meeting is the decision-making organ of the stock company. It has the power to pass resolutions on matters prescribed in the Commercial Code or in the articles of incorporation;¹²⁹ such as

- the appointment and the dismissal of directors and auditors;
- the remuneration of directors, auditors and liquidators;
- the alteration of the articles of incorporation;
- the reduction of capital;
- the dividend;
- the approval of the statements of accounts;
- the dissolution etc. are within its competence.

The ordinary general meeting must be held at least once a year, but it depends on the fiscal year too.¹³⁰ The general meeting may be convened by the determination of the board of directors and notice about it shall be sent to each shareholder at least two weeks prior to the determined day.¹³¹ The minority shareholders may make a proposal for convening of the general meeting to the directors.¹³² The chairman shall be selected at the general meeting, and he shall maintain the order of the general meeting and adjust the proposals.¹³³ By the general rule, all resolutions of the general meeting shall be adopted by the majority of votes of the shareholders present whose shares representing more than a half of the total number of the issued shares.¹³⁴ The shareholders may exercise his vote personally or by proxy.¹³⁵ Each shareholder shall have one vote per share, but the company shall not be entitled to vote for own shares.¹³⁶ About the general meeting minutes shall be made.¹³⁷ At the general meeting some matters are required either a special resolution or an extraordinary resolution. To the special resolution it is

¹²⁴ See CC, Book II., Chapter IV., Art. 275.

¹²⁵ See CC, Book II., Chapter IV., Art. 237.

¹²⁶ See CC, Book II., Chapter IV., Articles 404, 408, 417.

¹²⁷ See CC, Book II., Chapter IV., Art. 342.

¹²⁸ See CC, Book II., Chapter IV., Articles 267-268-3.

¹²⁹ See CC, Book II., Chapter IV., Art. 230-10.

¹³⁰ See CC, Book II., Chapter IV., Art. 234.

¹³¹ See CC, Book II., Chapter IV., Articles 231, 232.

¹³² See CC, Book II., Chapter IV., Articles 232-2, 237.

¹³³ See CC, Book II., Chapter IV., Art. 237-4.

¹³⁴ See CC, Book II., Chapter IV., Art. 239.

¹³⁵ See CC, Book II., Chapter IV., Art. 239 para 2.

¹³⁶ See CC, Book II., Chapter IV., Art. 241.

¹³⁷ See CC, Book II., Chapter IV., Art. 244.

necessary two-thirds or more of the votes of the shareholders present who hold shares representing more than one-half of the total number of issued shares;¹³⁸ for example at the cases of the transfer of the company's all or important part of business, of the amalgamation, of the reduction of share capital, of any alteration of the articles of incorporation etc. To the extraordinary resolution the majority of more than a half of shareholders, who hold shares representing two-thirds or more of the total number of the issued shares, is needed,¹³⁹ an example for this is restriction of transferability of stocks (CC Art. 348).

(b) The company limited by shares¹⁴⁰ must select at least three directors by the resolution of the general meeting, the quorum for which may not be less than a third of the total number of the issued shares.¹⁴¹ The directors are not required to be shareholders of the company.¹⁴² The relationship between the company and the director is one of the typical contracts of the Civil Code: mandate. The first term of office shall not exceed one year, at the following ones not more than two years.¹⁴³ The director may be removed any time by special resolution of the general meeting.¹⁴⁴ On the ground of the Article 254-3 the directors shall be obliged to obey any law or ordinance and the articles of incorporation as well as resolutions of the general meeting, and to perform their duties faithfully on behalf of the company.

The directors form the board of directors. This is a decision-making organ with respect to the conduct of the company's business and a supervision organ of the individual directors' activities.¹⁴⁵ Any director may convene the meeting of the board of directors.¹⁴⁶ The resolution of the board of directors shall be adopted by majority of votes of the directors present who shall constitute in number a majority of the directors.¹⁴⁷ By the resolution of the board of directors the stock company shall have a representative director.¹⁴⁸ The company's auditors have to attend the meeting of the board of directors.¹⁴⁹

(c) The auditor performs a variety of auditing (regularly audits the accounting documents, the business reports, the proposals about profits), investigating (control the directors' business decisions) and reporting (to the general meeting) functions. The auditor is appointed by the general meeting, his term of office shall be up to the time of termination of the ordinary general meeting.¹⁵⁰ The auditor shall not be the director or the manager or the employee of the company or of the subsidiary company.¹⁵¹ The auditor has an ex officio power (for example: in the Article 274 to ask for an operating

¹³⁸ See CC, Book II., Chapter IV., Art. 343.

¹³⁹ See CC, Book II., Chapter IV., Art. 348.

¹⁴⁰ See the appendix C and D about the Japanese management chart, the standard ranks of Japanese management.

¹⁴¹ See CC, Book II., Chapter IV., Articles 255, 254, 256-2.

¹⁴² See CC, Book II., Chapter IV., Art. 254 para 2.

¹⁴³ See CC, Book II., Chapter IV., Art. 256.

¹⁴⁴ See CC, Book II., Chapter IV., Art. 257.

¹⁴⁵ See CC, Book II., Chapter IV., Art. 260.

¹⁴⁶ See CC, Book II., Chapter IV., Art. 259.

¹⁴⁷ See CC, Book II., Chapter IV., Art. 260-2.

¹⁴⁸ See CC, Book II., Chapter IV., Art. 261.

¹⁴⁹ See CC, Book II., Chapter IV., Art. 260-3.

¹⁵⁰ See CC, Book II., Chapter IV., Art. 273.

¹⁵¹ See CC, Book II., Chapter IV., Art. 276.

from the directors, and by the Article 275-2 to injunct directors' illegal acts, or to represent the company on the ground of the Article 275-4).

Winding up

The stock company shall be dissolved on any of the following grounds:¹⁵²

- the expiration of the duration specified in the articles of incorporation, or other reasons which can be found also there;
- the bankruptcy of the company;
- the amalgamation;
- the decision of the Court;
- the special resolution of the general meeting;

The liquidation is a procedure by which completion of the company's all legal relations and distribution of its property to shareholders. In the course of the liquidation the stock company is under the supervision of the Court. This liquidation can be ordinary or special.

III.

*The registration of companies*¹⁵³

The Japanese registration can be classified by its subject (a) and by its state (b):

a) registration of trade name;

- registration of minor;
- registration of guardian;
- registration of manager;
- registration of general partnership;
- registration of limited partnership;
- registration of limited liability company;
- registration of joint stock company;
- registration of foreign company.

b) registration of independence (when the grounds for registration have occurred);

- registration of alteration (Art. 15 of the Commercial Code);¹⁵⁴
- registration of extinguishment;
- registration of rectification;
- registration of erasure.

The registration matters are those matters which must be registered in commercial registration. The matters which should be registered under any circumstances, are called

¹⁵² See CC, Book II., Chapter IV., Art. 404.

¹⁵³ „Introduction to the Commercial Registration Law in Japan” (Research and Training Institute, Ministry of Justice; Tokyo; Japan).

¹⁵⁴ „If any alteration has occurred in any of the matters registered or if any of such matters has ceased to exist, the party concerned shall effect registration of such alteration or cessation without delay.”

absolute registration matters. The registration of voluntary matters depend on the free will of the party concerned. An other classification of the registration matters distinguishes the institutional registration matters (by those legal relationship is formed, for example: the incorporation of a company) from the privileged registration matters (where the party concerned does not keep the law or its duties, for example: the dismissal of a manager). We have to mention the fundamental (for example: the trade name, objectives, capital and principal office of a company etc.) and the additional registration matters (if these matters are lacking, the registration will not be imperfect).

The general effects of registration are the effect of public notice¹⁵⁵ and the effect of public credit.¹⁵⁶ The special effects of registration are the following:

- a) formative effect (or establishment-type effect; it becomes a requirement for forming legal relations from the substantial point of view);
- b) effect of setting up against (it can be obtained through registration regardless of a bona fide or mala fide third person; for example: registration of transfer of trade name);
- c) supplementary effect (here certain effects are repaired by registration or by the lapse of a certain term after registration);
- d) effect of privilege (in this case certain persons' responsibilities are cancelled and exempted by registration, or by the lapse of a certain term after registration);
- e) presumptive effect (or actual, de facto effect; it refers to the presumption that matters registered are actual and valid);
- f) exclusive effect (where the same registration cannot be used within a certain area through registration);
- g) other effects (for example: Art. 481 of the Commercial Code).¹⁵⁷

The affairs of commercial registration shall be administered by the Legal Affairs Bureau or District Legal Affairs Bureau. Its branch bureau or local office have jurisdiction over the seat of the place of a business office of the party concerned as a competent registry.¹⁵⁸ The party concerned (or his/her proxy) shall appear at the reception counter of the registry (this is the principle of appearance by the party concerned). The application for registration by mail shall be rejected according to the general rule. The applicant shall fill in an application form and shall sign and affix a seal to it. The size and quality of paper used for application form are not determined by special provisions. On the application form the letters should not be altered and pencils cannot be used. The application by word is not permitted. The contents of application form:

- the name and the place of the applicant's residence;
- the name and the place of the proxy's residence (if such is applied);

¹⁵⁵ CC, Art. 12: „Matters required to be registered cannot be set up against a bona fide third person until the registration and public notice thereof will have been duly effected; even after the registration and public notice of such matters will have been effected, they cannot be set up against a third person who for any reasonable cause has been unaware of them.”

¹⁵⁶ CC, Art. 14: „A person who has either intentionally or by negligence registered untrue matters cannot set up the untruth of such matters against a bona fide third person.”

¹⁵⁷ „A foreign company shall not engage in commercial transactions as a continuing business in Japan until it has made the registration mentioned in Art. 479.”

¹⁵⁸ See Art. 1 of the Regulation for Establishment of Legal Affairs Bureau, District Legal Affairs Bureau and their Branch Bureau and Local Offices (Ordinance No. 12 of the Ministry of Justice of 1949).

- the cause for registration;
- the matters required to be registered;
- the date of arrival of permission (if it is needed from the governmental agency);
- the amount of a registration licence tax;
- the date;
- the indication of the registry;
- the indication of the branch office;
- the list and the consecutive number of appendixes (these are among others: the document testifying the proxy's power, the letter of permission from a governmental agency, the articles of incorporation, the minutes of shareholders' general meeting, the minutes of the board of directors, the final balance sheets, the document testifying to the consent of assumption of office, the certificate of seal impression).

The term of registration for each registration is stipulated in the case of a company.¹⁵⁹ If the application is received at the registry, the stipulated matters will be entered in a reception book, and the date and the receipt number will be placed on the application form. If the application form with its appendixes is accepted, the applicant may claim for the issuance of a receipt of the document from the register.

By this survey we wish to overview the basics of the Japanese Company Law.

I'd like to express here my thanks to Professor Tomonobu Yamashita (University of Tokyo) for his tutor's help.

¹⁵⁹ See CC, Art. 64 para 2, Art. 65 para 1, Art. 66 para 1, Articles 67, 96, 97, 101, 114, 119-2, 123, 134, 188.

Appendixes

Appendix A.

Main differences between Stock Company and Limited Liability Company¹⁶⁰

	Kabushiki Kaisha	Yugen Kaisha
Subscribers	„Private Incorporation” (without offering): one or more „Public Incorporation”: two or more	Between one and fifty
Subscription amount	Y50,000 or more per share	Y50,000 or more per „unit”
Paid-in Capital	Y10,000,000 or more	Y3,000,000 ore more
Authorised Capital	Specified upon incorporation	Not applicable (so e.g. Articles of Incorporation must be revised to increase capitalisation).
Securities representing equity	Share certificates (required in Principle)	Not required
Transfer of equity	No restriction (unless added to Articles of Incorporation)	Not restriction on transfer among „members”; they must agree in general meeting for any transfer to outsiders
Means for resolution at general meetings	Vote by shareholders or Proxy present (but „large companies” with more than 1000 shareholders may send out voting forms to be submitted at least the day before the meeting)	No restriction
Officers: Directors Statutory Auditor	three or more one or more (three or more for „large companies”)	one or more not required (but appointment possible by provision in the Articles of Incorporation), not required (but appointment possible by provision in the Articles of Incorporation, or resolution at general shareholders’ meeting)
Representative Director	one or more	
Terms of office: Directors Statutory Auditors	two years three years	No requirements No requirements
Disclosure of financial Accounts	Required	Not required

¹⁶⁰ „Doing business in Asia” (CCH Asia Limited; Volume I; 1991; 37,9012).

ARTICLES OF INCORPORATION¹⁶¹
OF
MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD.
(Matsushita Denki Sangyo Kabushiki Kaisha)

CHAPTER I
GENERAL PROVISIONS

Article 1. (Trade Name)

The Company shall be called Matsushita Denki Sangyo Kabushiki Kaisha, and written in English as Matsushita Electric Industrial Co., Ltd.

Article 2. (Principal Office)

The principal office of the Company shall be located in Kadoma-shi, Osaka-fu.

Article 3. (Purpose)

The purpose of the Company shall be to engage in the following businesses:

- I. communication and electronic equipment, as well as lighting equipment;
- II. manufacture and sale of gas, kerosene and kitchen equipment, as well as machinery and equipment for building and housing;
- III. manufacture and sale of machinery and equipment for office and transportation, as well as for sales activities;
- IV. manufacture and sale of medical, health and hygienic equipment, apparatus and material;
- V. manufacture and sale of optical and precision machinery and equipment;
- VI. manufacture and sale of batteries, battery-operated products, carbon and manganese and other chemical and metal products;
- VII. manufacture and sale of air conditioning and anti-pollution equipment, as well as industrial machinery and equipment;
- VIII. manufacture and sale of other machinery and equipment
- IX. engineering and installation of machinery and equipment related to any of the preceding items as well as engineering and performance of and contracting for other construction work;
- X. production and sale of software;
- XI. sale of iron and steel, nonferrous metals, minerals, oil, gas, ceramics, paper, pulp, rubber, leather, fibre and their products;
- XII. sale of foods, beverages, liquor and alcoholics, agricultural, livestock, dairy and marine produces, animal feed and their raw materials;
- XIII. manufacture and sale of drugs, quasi-drugs, cosmetics, fertiliser, poisonous and deleterious substance and other chemical products;

¹⁶¹ <http://www.sec.gov/Archives/edgar/data/63271/000095012301504888/y51489ex99-1.htm>

XIV. sale of woods and other construction materials and general merchandise;

XV. motion picture and musical entertainment business and promotion of sporting events;

XVI. export and import of products, materials and software mentioned in each of the preceding items (other than item 9);

XVII. providing repair and maintenance services for the products, goods and software mentioned in each of the preceding items for itself and on behalf of others;

XVIII. provision of information and communication services, and broadcasting business;

XIX. business related to publishing, printing, freight forwarding, security, maintenance of buildings, dispatch of workers, general leasing, financing, non-life insurance agency and buying, selling, maintaining and leasing of real estate;

XX. investment in various businesses;

XXI. accepting commission for investigations, research, development and consulting related to any of the preceding items; and

XXII. all other business or businesses incidental or related to any of the preceding items.

Article 4. (*Method of Public Notice*)

Public notices of the Company shall be given in the „*Nihon Keizai Shimbun*”

**CHAPTER II
SHARES**

Article 5. (*Total Number of Shares and Par Value of Each Share*)

The total number of shares authorised to be issued by the Company shall be four billion nine hundred and fifty million (4,950,000,000).

The amount of each share having par value shall be fifty (50) yen.

Article 6. (*Retirement of Shares*)

After June 26, 1988, the Company may, by a resolution of the Board of Directors, purchase up to two hundred million (200,000,000) of the Company's shares with profits and retire them.

Article 7. (*Number of Shares Constituting One Unit of Shares*)

The number of shares constituting one unit of shares shall be one thousand (1,000).

Article 8. (*Record Date*)

The Company shall deem those shareholders (including beneficial shareholders; hereinafter the same interpretation being applicable) having voting rights whose names are registered as such on the register of shareholders (including register of beneficial shareholders; hereinafter the same interpretation being applicable) as of the end of each fiscal period as the shareholders entitled to exercise their rights as shareholders at the ordinary general meeting of shareholders for such fiscal period.

In addition to the preceding paragraph, the Company shall, by a resolution of the Board of Directors and upon giving prior public notice, determine those shareholders

and registered pledgees whose names appear as such on the register of shareholders as of a designated date as the shareholders or pledgees entitled to exercise their rights.

Article 9. (*Transfer Agent*)

The Company shall appoint a transfer agent with respect to shares.

The transfer agent and its handling office shall be designated by a resolution of the Board of Directors, and public notice shall be given with regard thereto.

The register of shareholders of the Company shall be kept at the handling office of the transfer agent, and the handling business related to shares, such as registration of transfer of shares, purchase by the Company of shares not constituting a full unit, etc., shall be handled by the transfer agent and the Company shall not handle such business.

Article 10. (*Share Handling Regulations*)

Registration of transfers of shares, purchase by the Company of shares constituting less than one unit of shares and other handling business related to shares of the Company shall be governed by, in addition to these Articles of Incorporation, the Share Handling Regulations established by the Board of Directors.

CHAPTER III
GENERAL MEETINGS OF SHAREHOLDERS

Article 11. (*Convocation*)

An ordinary general meeting of shareholders of the Company shall be convened within three (3) months from the day immediately following the day on which the accounts are closed, and an extraordinary general meeting of shareholders may be convened whenever necessary.

Article 12. (*Chairman of General Meetings of Shareholders*)

Chairmanship of general meetings of shareholders shall be assumed by the President. Should the President be unable to act, one of the other Representative Directors shall take his/her place as previously determined by the Board of Directors.

Article 13. (*Method of Adopting Resolutions*)

Unless otherwise provided by laws or orders or by these Articles of Incorporation, resolutions of general meetings of shareholders shall be adopted by a majority of the votes of shareholders present or represented at the meeting.

Article 14. (*Exercise of Voting Rights through Proxy*)

A shareholder may exercise his/her voting rights through a proxy who is also a shareholder of the Company entitled to exercise voting rights; provided however, that the proxy must submit to the Company a power of attorney authorising such proxy.

CHAPTER IV
DIRECTORS AND BOARD OF DIRECTORS

Article 15. (*Number of Directors*)

The number of Directors of the Company shall be three (3) or more.

Article 16. (*Election of Directors*)

Directors shall be elected at a general meeting of shareholders.

Resolutions for such election shall be adopted by a majority of the votes of the shareholders present who hold shares representing in the aggregate not less than one-third of the total outstanding shares which carry voting rights.

No cumulative voting shall be used with respect to the resolutions for the election of Directors.

Article 17. (*Representative Directors and Directors with Special Titles*)

The Company may, by a resolution of the Board of Directors, appoint from among the Directors one Chairman of the Board of Directors, one Vice Chairman of the Board of Directors, one President, and one or more Executive Vice Presidents, Senior Managing Directors and Managing Directors.

The Chairman of the Board of Directors, the Vice Chairman of the Board of Directors, the President, Executive Vice Presidents, Senior Managing Directors and Managing Directors shall severally represent the Company.

Article 18. (*Terms of Office of Directors*)

The terms of office of Directors shall expire at the conclusion of the ordinary general meeting of shareholders with respect to the last closing of accounts within two (2) years from their assumption of office.

The term of office of a Director elected to fill a vacancy shall expire at the time his/her predecessor's full term of office would have expired.

Article 19. (*Remuneration and Retirement Allowances for Directors*)

Remuneration and retirement allowances for Directors shall be determined at a general meeting of shareholders.

Article 20. (*Notice of Convocation of a Meeting of Board of Directors*)

Notice of convocation of a meeting of the Board of Directors shall be dispatched to each Director and Corporate Auditor three (3) days in advance of the date set for the meeting; provided, however, that in case of urgency this period may be shortened.

Article 21. (*Regulations of Board of Directors*)

Matters to be resolved by the Board of Directors and any other details concerning the Board of Directors shall be governed by the Regulations of the Board of Directors established by the Board of Directors.

CHAPTER V

COPRORATE AUDITORS AND BOARD OF CORPORATE AUDITORS

Article 22. (*Number of Corporate Auditors*)

The number of Corporate Auditors of the Company shall be three (3) or more.

Article 23. (*Election of Corporate Auditors*)

Corporate Auditors shall be elected at a general meeting of shareholders.

Resolutions for such election shall be adopted by a majority of the votes of the shareholders present who hold shares representing in the aggregate not less than one-third of the total outstanding shares which carry voting rights.

Article 24. (*Full-time Corporate Auditors and Senior Corporate Auditors*)

The Company shall appoint one or more Full-time Corporate Auditor(s) who shall be selected by the Corporate Auditors from among their number.

The Company may appoint one or more Senior Corporate Auditor(s) who shall be selected by the Corporate Auditors from among their number.

Article 25. (*Terms of office of Corporate Auditors*)

The terms of office of Corporate Auditors shall expire at the conclusion of the ordinary general meeting of shareholders with respect to the last closing of accounts within three (3) years from their assumption of office.

The term of office of a Corporate Auditor elected to fill a vacancy shall expire at the time his/her predecessor's full term of office would have expired.

Article 26. (*Remuneration and Retirement Allowances for Corporate Auditors*)

Remuneration and retirement allowances for Corporate Auditors shall be determined at a general meeting of shareholders.

Article 27. (*Notice of Convocation of a Meeting of Board of Corporate Auditors*)

Notice of convocation of a meeting of the Board of Corporate Auditors shall be dispatched to each Corporate Auditor three (3) days in advance of the date set for the meeting; provided, however, that in case of urgency this period may be shortened.

Article 28. (*Regulations of Board of Corporate Auditors*)

Matters to be resolved by the Board of Corporate Auditors and any other details concerning the Board of Corporate Auditors shall be governed by the Regulations of the Board of Corporate Auditors established by the Board of Corporate Auditors.

**CHAPTER VI
ACCOUNTS**

Article 29. (*Fiscal Year and Closing of Accounts*)

The fiscal year of the Company shall commence on April 1 each year and end on March 31 the next following year and the accounts shall be closed on the last day of each fiscal year.

Article 30. (*Dividends*)

Dividends of the Company shall be paid to those shareholders or registered pledgees whose names appear as such on the register of shareholders at the end of each fiscal period.

Article 31. (*Interim Dividends*)

The Company may, by a resolution of the Board of Directors, pay interim dividends (cash distributions as provided in Article 293-5 of the Commercial Code; hereinafter the same being applicable) to those shareholders or registered pledgees whose names appear as such on the register of shareholders as of the close of September 30 of each year.

Article 32. (*Expiration Period for Dividends and Interim Dividends*)

In case dividends or interim dividends shall not be received within three (3) years from the commencement of payment thereof, the Company shall be relieved from the obligation for the payment thereof.

Dividends and interim dividends shall bear no interest.

Article 33. (*Timing of Conversion of Convertible Debentures and Dividends*)

With respect to the first payment of dividends on shares issued upon conversion of convertible debentures, such conversion shall be deemed to have been made at the beginning of the business year in which the application for conversion was made and the dividends shall be paid accordingly.

For the purpose of the application of the above provisions, the interim dividends pursuant to the provisions of Article 31 shall be deemed as the dividends and each of the

periods from April 1 to September 30 and from October 1 to March 31 of the next following year shall be deemed a business year respectively.

CHAPTER VII
MISCELLANEOUS RULES

Article 34. (Transfer Agent of Bonds or Debentures)

The Company shall appoint a transfer agent or agents in respect to bonds or debentures issued by the Company.

IN WITNESS WHEREOF, the promoters of this company have prepared these Articles of Incorporation and affixed their names and signatures or seal impressions as hereinbelow indicated, for the purpose of incorporating MDS Kabushiki Kaisha.

Date.

Promoter:	SEAL or signature
Promoter:	SEAL
Promoter:	SEAL
Promoter:	SEAL
Promoter:	SEAL
Promoter:	SEAL
Promoter:	SEAL

- * -

SHARE HANDLING REGULATIONS
OF
MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD.

(Matsushita Denki Sangyo Kabushiki Kaisha)

CHAPTER I
GENERAL PROVISIONS

Article 1. (Purpose)

Pursuant to the authority granted by Article 10 of the Articles of Incorporation of the Company, as amended, these Regulations shall govern the denominations of share certificates, handling of shares of stock of the Company and charges therefor, handling of shares in respect of beneficial shareholders shall be governed by Chapter IX of these regulations.

Article 2. (Transfer Agent)

The Transfer Agent of the Company, its handling office and liaison offices shall be as follows:

Transfer Agent: The Chuo Mitsui Trust and Banking Company, Limited
33-1, Shiba 3-chome, Minato-ku, Tokyo

Handling Office: The Chuo Mitsui Trust and Banking Company, Limited,
Osaka Branch Office 2-21, Kitahama 2-chome, Chuo-ku,
Osaka

Liaison Offices: Head office and all branch offices of The
Chuo Mitsui Trust and Banking Company, Limited

Head office, branch offices and local offices of Japan Securities Agents, Ltd.

Article 3. (*Denominations of Share Certificates*)

1. All share certificates to be issued by the Company shall be of the non-bearer type, and shall be in the denominations of one hundred (100), five hundred (500), one thousand (1,000), five thousand (5,000), ten thousand (10,000), one hundred thousand (100,000) shares and those representing any number less than one hundred (100) shares; provided, however, that the share certificates to be reissued to represent shares deposited with Japan Securities Depository Center in respect of which non-possession of share certificates was requested which are purchased by the Company for the purpose of retirement thereof, may be issued in the number of such shares to be reissued.

2. However, of the share certificates referred to in the preceding paragraph, share certificates representing any number of shares less than one unit as provided for in Article 7 of the Articles of Incorporation (hereinafter referred to as "fractional unit shares") shall not be issued, except pursuant to the provisions of Articles 15 through 17 hereof.

Article 4. (*Method of making Request and Reports*)

1. All request, reports and other procedures with respect to the business which the Company has entrusted to the Transfer Agent shall be made to the Transfer Agent.

2. All request and reports under these Regulations shall be made in the forms prescribed by the Company and affixed with the seal impression which has been filed with the Company under Article 9.

3. Should any request or report referred to in the preceding paragraph be made by a proxy, a document evidencing the authority of such proxy shall be submitted to the Transfer Agent.

CHAPTER II
REGISTRATION OF TRANSFER OF SHARES

Article 5. (*Registration of Transfer of Shares*)

1. In case registration of transfer of shares is requested, a written request thereof shall be submitted together with the share certificates concerned; provide, however, that no request may be made for registration of any transfer of fractional unit shares for the reason of acquisition by assignment, unless the person acquiring such shares is a shareholder whose name appears on the register of shareholders.

2. In case registration of transfer of shares is requested for reasons other than assignment, a written request therefor and the share certificates concerned together with a document evidencing the reason for such acquisition shall be submitted; provided, however, that if no share certificates have been issued for such shares, submission of share certificates shall not be required.

Article 6. (*Registration of Transfer of Shares Where Special Procedure is Required by Laws or Ordinances*)

In case the transfer of shares requires the compliance with a special procedure by laws or ordinances, a document evidencing the completion of the compliance with such special procedure shall also be submitted.

CHAPTER III

REGISTRATION OF PLEDGE AND INDICATION OF TRUST PROPERTY.

Article 7. (*Registration of Pledge and Cancellation Thereof*)

In case registration of a pledge or cancellation thereof is requested in respect of shares, a written request therefor jointly signed by the pledgor and the pledgee shall be submitted together with the share certificates concerned.

Article 8. (*Indication of Trust Property and Cancellation Thereof*)

In case indication of a trust property or cancellation thereof is requested in respect of shares, a written request therefor shall be submitted either by the trustor or by the trustee together with the share certificates concerned.

CHAPTER IV

REPORTS

Article 9. (*Reports of Name, Address and Seal Impression*)

I. A shareholder, his/her registered pledgee or his/her legal representative, if any, shall report their names, addressees and seal impressions; provided, however, that a foreigner may substitute his/her specimen signature for such seal impression.

II. In case of any change in the matters referred to in the preceding paragraph, a report thereof shall be submitted.

Article 10. (*Report of Address by Nonresident Shareholders*)

I. A shareholder and hi/her registered pledgee or his/her legal representative, if any, who is not residing in Japan shall, in addition to the procedures referred to in the preceding Article, either appoint a standing proxy or designate a mailing address in Japan, and a report thereof shall be submitted.

II. The provisions of the preceding Article shall apply mutatis mutandis to the standing proxy.

Article 11. (*Representative of Corporation*)

I. If a shareholder is a corporation, the name of a representative of such corporation shall be reported.

II. With respect to any change in the matters referred to in the preceding paragraph, a written report thereof shall be submitted together with a certified copy of the extract of the corporate registration record.

Article 12. (*Representative of Jointly-Owned Shares*)

I. Shareholders who own shares jointly shall appoint one representative and a report thereof signed by all such shareholders shall be submitted.

2. The same shall apply in case of any change occurring in such representative.

Article 13. (*Change in Entries in the Register of Shareholders and in Share Certificates*)

Should it be desired to make any change of an entry in the register of shareholders or in share certificates for the following reasons, a written report thereof shall be submitted together with the share certificates concerned and any document evidencing the fact of such change:

- a) change of family name, or first name;
- b) appointment of legal representative, change or cancellation thereof;
- c) change of trade name or corporate name,; and
- d) change in corporate organisation.

CHAPTER V *REISSUANCE OF SHARE CERTIFICATES*

Article 14. (*Reissuance due to Division or Consolidation*)

In case issuance of new share certificates is requested for the purpose of dividing or consolidating share certificates, a written request therefor shall be submitted together with the share certificates concerned.

Article 15. (*Reissuance due to Loss*)

In case issuance of new share certificates requested due to loss, a written request therefor shall be submitted together with a certified transcript of the judgement of nullification of such lost share certificates.

Article 16. (*Reissuance due to Defacement or Mutilation*)

In case issuance of new share certificates is requested due to defacement or mutilation, a written request therefor shall be submitted together with the share certificates concerned; provided, however, that if it is difficult to discern whether the share certificates in question are genuine or not because of excessive defacement or mutilation, the procedure prescribed in the preceding Article shall apply *mutatis mutandis*.

Article 17. (*Reissuance due to Completion of Columns for Endorsement*)

In case all the columns for endorsement of a share certificate have been filled, the Company shall retrieve such share certificate and issue a new share certificate.

CHAPTER VI *NON-POSSESSION OF SHARE CERTIFICATES*

Article 18. (*Request for Non-possession of Share Certificates*)

In case non-possession of share certificates is requested, a written request therefor shall be submitted together with the share certificates concerned; provided, however, that if the share certificates concerned have not yet been issued, submission of share certificates shall not be required.

Article 19. (*Request for Issuance or Delivery of Share Certificates Placed in Non-possession Status*)

In case a shareholder who has requested non-possession of share certificates requests the issuance or return of the share certificates, a written request therefor shall be submitted; provided, however, that no request may be made for delivery of share certificates representing fractional unit shares if the Company has treated the certificates for such shares as non-issued share certificates.

CHAPTER VII
PURCHASE OF FRACTIONAL UNIT SHARES

Article 20. (*Request for Purchase of Shares*)

In case purchase of fractional unit shares by the Company is requested, a request therefor in the form prescribed by the Company shall be submitted together with the share certificates concerned; provided, however, that if no share certificates have been issued for such shares, submission of share certificates shall not be required.

Article 21. (*Purchase Price*)

The purchase price per share of the fractional unit shares shall be the last selling price of the shares at the Osaka Securities Exchange on the day when such request is accepted by the Handling Office or any of the Liaison Offices of the Transfer Agent referred to in Article 2; provided, however, that if no sales were made on such day at the Osaka Securities Exchange, that last selling price of the shares at the Tokyo Stock Exchange on that day shall be the purchase price. In case no sales were made at either of these exchanges, the price at which the shares were first sold at the Osaka Securities Exchange subsequent to that day shall be the purchase price.

Article 22. (*Payment of Purchase Price*)

I. The purchase price shall be paid on and after the day specified by the Company which will be within six business days from the day following the day when the purchase price is fixed pursuant to the preceding Article, at the place where the request for purchase was submitted, to the shareholder who requested such payment.

II. The shareholder who made a request for such purchase may request that such payment be made by way of transfer to a bank account designated by him/her, or by postal money order.

III. At the time of payment of such purchase price, share handling charges provided for in item 2 of Article 24 shall be deducted.

Article 23. (*Transfer of Title of Purchased Shares*)

When purchase of fractional unit shares by the Company is requested, the title to such shares shall be transferred to the Company on the date specified by the Company in the case provided in paragraph 1 of the preceding Article, or on the date when all payment procedures have been completed in the case provided in paragraph 2 of the preceding Article.

CHAPTER VIII
HANDLING CHARGES

Article 24. (*Handling Charges*)

Handling charges in connection with shares of the Company shall be as follows:

1. Article 15. (Reissuance due to Loss), Article 16. (Reissuance due to Defacement or Mutilation), and Article 19. (Request for Issuance or Delivery of Share Certificates Placed in Non- possession Status).

The charges shall be an amount equivalent to the amount of revenue stamps incurred for the issuance of the new share certificates.

2. In the case of purchasing of fractional unit shares pursuant to Article 20. (Request for Purchase of Shares).

The charges shall be the amount equal to the proportion of an amount set forth below as equivalent to the brokerage commission for sales of shares to the relevant number of fractional unit shares so purchased.

In respect of the total amount obtained by multiplying the purchase price per share provided for in Article 21 by the number of shares constituting one unit of shares:

For the portion of not more than one million (1,000,000) yen: 1.15 %

For the portion of more than one million (1,000,000) yen and not more than five million yen (5,000,000) yen: 0.9 %

[Any amount less than one (1) yen shall be disregarded.]

CHAPTER IX
SPECIAL TREATMENT WITH RESPECT TO BENEFICIAL SHAREHOLDERS

Article 25. (*Entry into Register of Beneficial Shareholders*)

The entry into the register of beneficial shareholders shall be made based on the notice of beneficial shareholders from Japan Securities Depository Center (the “Center”) and beneficial shareholder cards.

Article 26. (*Beneficial Shareholder Cards*)

The beneficial shareholders shall file with the Company their beneficial shareholder cards through any participant of the Center (the “Participant”); provided, however, in case the aggregate number of shares represented by share certificates of any beneficial shareholder deposited with the Participant is less than one full unit of shares, no such beneficial shareholder may file his/her beneficial shareholder card.

Article 27. (*Integration*)

In case any shareholder whose name appears on the register of shareholders is deemed to be the same person as any beneficial shareholder whose name appears on the register of beneficial shareholders because of the identity of names and addresses, the respective numbers of shares of each such registration shall be aggregated in respect of the exercise of rights of shareholders.

Article 28. (*Reports by Beneficial Shareholders*)

I. The provision of chapter IV shall be applicable, *mutatis mutandis*, to the beneficial shareholders; provided however, that submission of share certificate(s) shall not be required for changing the entry in the register of beneficial shareholders.

II. Whenever the beneficial shareholders shall make any reports as provided in the preceding paragraph to the company, such report shall be made through the Participant, except when the change of the registered seal impression is made.

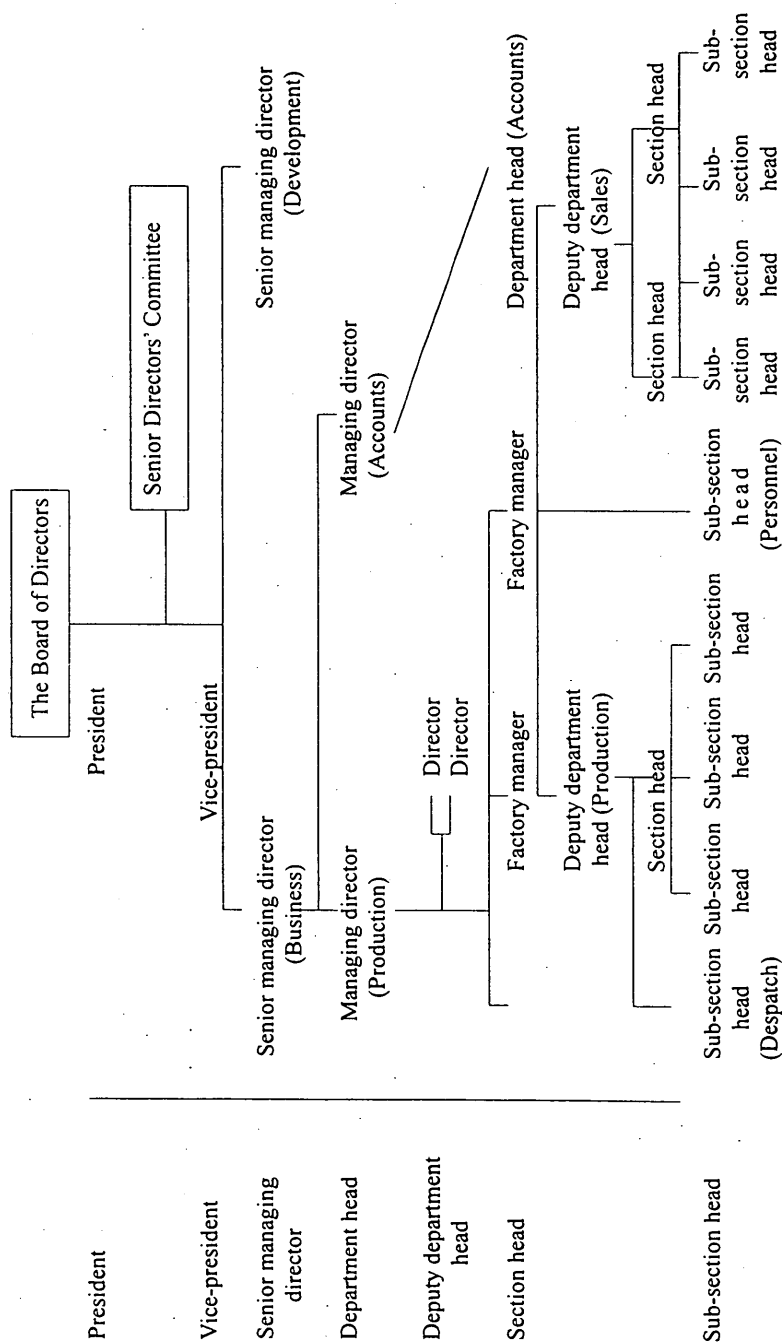
Article 29. (*Purchase of Fractional Unit of Shares of Beneficial Shareholders*)

The provisions of Chapter VII shall be applicable, *mutatis mutandis*, to the beneficial shareholders; provided, however, that if any beneficial shareholder requests the purchase of fractional unit of shares, he/she shall do so through the Participant(s) and the Center.

Article 30. (*Miscellaneous*)

Treatment and handling relating to the beneficial shareholders shall be governed by the rules or regulations established by the Center in addition to this Chapter.

Appendix C.

The management chart of a Japanese company¹¹ R. Clark, "The Japanese Company" (Yale University Press, New Haven and London, 1979, p. 107).

The standard ranks of Japanese management¹⁶²

Rank	Direct translation	English equivalent	Legal status
<i>Shacho</i>	Company head	President	Director (representative)
<i>Fukushacho</i>	Deputy company head	Vice-president	Director
<i>Senmu torishimariyaku</i>	Special duty executive director	Senior managing director	Director
<i>Jomu torishimariyaku</i>	Ordinary duty executive director	Managing director	Director
<i>Torishimariyaku</i>	Executive director	Director	Director
<i>Bucho</i>	Department head	Department head	Employee
<i>Jicho</i>	Deputy head	Deputy department head	Employee
<i>Kacho</i>	Section head	Section head	Employee
<i>Kakaricho</i>	Sub-section head	Sub-section head	Employee
<i>Hancho</i>	Team head	Foreman	Employee
<i>Hira-shain</i>	Ordinary company member	Worker, executive	Employee

¹⁶² R. CLARK: *The Japanese Company*. (Yale University Press; New Haven and London; 1979; p. 157.

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PAPP TEKLA

A JAPÁN TÁRSASÁGI JOGRÓL

(Összefoglalás)

A szerző a japán társasági jog alapjainak bemutatására törekszik Ennek keretében kitér a japán kereskedelmi jog jogforrásainak ismertetésére és hierarchiájára, valamint a kereskedelmi kódex tartalmára.

Ezt követi a japán társasági jog általános fogalmainak tisztázása; itt kerül sor a kereskedő, a székhely, a kereskedelmi név és a társaság fogalmának elemzésére és jellemzőik leírására.

A tanulmány második részében az üzletszerű gazdasági tevékenységre alapítható japán szervezeti típusok részletes elemzése található, úgymint

- a) a polgári jogi társaság bemutatása;
- b) a csendestársaság karakterizálása;
- c) a közkereseti társaság fogalma, jellemzői, társasági szerződésének tartalma, alapítása, a társaság belső és külső jogviszonyainak ábrázolása; megszűnése;
- d) a betéti társaság fogalma, eltérései a közkereseti társaságtól;
- e) a korlátolt felelősségű társaság fogalmi leírása, társasági szerződésének tartalmi elemei, alapítása, a társasági jogok és kötelezettségek részletezése, a taggyűlés és az igazgatók, valamint az auditorok hatásköre, a társasági jogi jogviszony megszűnése;
- f) a részvénytársaság jellemzése és a főbb ismérvek alapján elhatárolása a korlátolt felelősségű társaságtól, a kétfajta alapítási folyamat szemléltetése, a részvénnel és az alaptőkével kapcsolatos előírások ismertetése, a részvényesi jogok taglálása, a társaság szervei (közgyűlés, igazgatóság, auditorok) hatásköre és eljárásának bemutatása, a részvénytársaság megszűnése.

A tanulmány harmadik részében a japán regisztráció osztályozására kerül sor, majd a bejegyzendő adatok, jogok, tények csoportosítására. Majd a bejegyzés különböző joghatásainak részletes elemzése következik. Végül a japán társaságokkal kapcsolatos bejegyzési eljárás mozzanatai nyernek bemutatást.

A feldolgozott joganyag jobb és könnyebb megértését segítik elő a mellékletek: egy részvénytársaság társasági szerződés mintája, a korlátolt felelősségű és a részvénytársaság főbb különbségeit ábrázoló táblázat, valamint a japán menedzsment hierarchiáját és rangjait bemutató két ábra.

A SZEGEDI TUDOMÁNYEGYETEM ÁLLAM- ÉS JOGTUDOMÁNYI KARÁNAK E SOROZATBAN ÚJABBAN MEGJELENT KIADVÁNYAI

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